

Serial No.: 10/687,867  
Atty. Docket No.: P67441US1

**REMARKS**

The Office Action mailed March 31, 2004, has been carefully reviewed and Applicants note with appreciation the identification of allowed subject matter.

By this Amendment, claims 7, 9-12, and 14-18 have been canceled, claims 1, 8 and 13 have been amended, and claims 19-30 have been added. Accordingly, claims 1-6, 8, 13, and 19-30 are pending in the application. Claims 1, 19 and 26 are independent.

The Examiner required restriction, stating that the application contains two patentably distinct species, namely Species I as shown in Figures 1-5, and Species II as shown in Figures 6-13. Applicants hereby confirm the provisional election of Species II made by telephone on March 15, 2004. Claims directed to the non-elected species have been canceled. Pending claims 1-6, 8, 13, and 19-30 read on the elected species.

The Examiner objected to the drawings as not complying with 37 C.F.R. 1.84(p)(4) because reference characters "114" and "116" have been used to refer to the same structure. By this Amendment, Applicants have amended page 12 of the specification to remove the unintended transposition of such reference characters. Accordingly, reference character "114" refers only to the shoulder element, and reference character "116" refers

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only to the aperture therein. Withdrawal of the objection is therefore requested.

The Examiner rejected claim 13 under 35 U.S.C. 112, second paragraph, as being indefinite. Applicants have herein corrected the informality noted in claim 13.

The Examiner rejected claims 1-4, 13 and 16 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,632,061 to Tucker et al. ("Tucker"), and rejected claims 5 and 6 under 35 U.S.C. 103(a) as being unpatentable over Tucker in view of U.S. Patent No. 6,546,894 to Chrisco et al. The Examiner objected to claims 7 and 8 as being dependent on a rejected base claim but stated that claims 7 and 8 would be allowable if rewritten in independent form to include the limitations of the underlying base claim and any intervening claims.

By this Amendment, Applicants have amended claim 1 to include the limitations of claim 7, placing claim 1 into condition for allowance in accordance with the Examiner's identification of allowable subject matter in claim 7. Claims 2-6, 8, and 13 are also in condition for allowance as claims properly dependent on an allowable base claim. Favorable reconsideration is requested.

New claim 19 is presented as allowable for the same reasons as amended claim 1. Specifically, the prior art does not

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disclose or suggest a bird feeder with a central post carrying a support ring near an upper end thereof and a plurality of modular hopper elements, each hopper element having a structure adjacent an upper end thereof for securing the hopper element to the support ring. Instead, the feed compartments in the bird feeder shown in Tucker are supported at their bases and they are not coupled to the central post adjacent an upper end thereof.

Nor does the prior art teach or suggest the present invention as set forth in new claim 26. Specifically, the prior art does not disclose a bird feeder having a housing and a plurality of modular hopper elements, the walls of each hopper element defining a frustoconical *segment* with a curved front wall, i.e., a segment forming part of an overall assembly that is frustoconical. In an assembled relationship, a side wall of each hopper element is juxtaposed to a side wall of at least one other hopper element such that the plurality of hopper elements *together form a frustoconical shape* tapering downwardly. This is not shown or suggested in the prior art.

Tucker discloses a bird feeder having a plurality of triangular segments which, when assembled, define a pentagonal structure. While such structure does have a slight taper, as seen in Figures 4, 5 and 7, the assembly of these segments is not *frustoconical*. Furthermore, the triangular shape of the segments

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requires that Tucker have at least three, and probably four, in order to complete the functional feeder assembly.

With the present invention, by contrast, the frustoconical shape created when all of the hopper elements are assembled together may be created using any number of segments, whether only two, in which case each segment would have a semicircular front wall, or three, four, or more segments. By designing the hopper elements with such frustoconical *segments*, the resulting feeder provides flexibility in the number of feed cavities, i.e., and thus the feed assortment, and also provides a very aesthetically pleasing feeder. Favorable consideration and allowance of claim 26 is therefore requested.

Claims 20-25 and 27-30 are also in condition for allowance as claims properly dependent on an allowable base claim and for the subject matter contained therein. Specifically, claim 20 is allowable for the same reasons as claim 26, and claims 21 and 22 are in condition for allowance in accordance with the Examiner's identification of allowable subject matter in original claim 7.

Also, with particular reference to claim 28, the prior art does not disclose a frustoconical *assembly* of hopper elements having a central post, with each hopper element having two side walls and with inner edges of such side walls being connected by

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an arcuate wall that faces the central post. Nor does the prior art disclose a support ring carried by the central post near an upper end thereof with the hopper elements being secured thereto, as set forth in claim 29. Finally, the prior art does not disclose an enlarged spacer ring carried by the central post adjacent a lower end thereof and abutting against the arcuate wall, as set forth in claim 30. Favorable consideration of such claims is therefore requested.

With this amendment and the foregoing remarks, it is respectfully submitted that the present application is in condition for allowance. Should the Examiner have any questions or comments, the Examiner is cordially invited to telephone the undersigned attorney so that the present application can receive an early Notice of Allowance.

Respectfully submitted,

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